IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Bail Appl..No. 6063 of 2007()

CRIME NO. 276/07 OF ERUMAPETTY POLICE STATION

PETITIONER/ACCUSED

NELSON,A GED 30 YEARS,S/O. P.J.LASSOR,
PERAMANGALATH HOUSE, KOTTAPPADI PO,CHAVAKKADU,
TRICHUR DIST.

BY ADV. SRI.C.P.UDAYABHANU
SRI.M.ANIL KUMAR
SMT.PREETHI K.PURUSHOTHAMAN
SMT.C.SUCHITHRA

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
S.I. OF POLICE,ERUMAPETTY POLICE STATION
(CRIME 276/07) REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6063 of 2007

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Dated this the 9th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner is the sole accused. He faces allegations for offences punishable, inter alia, under Section 308 I.P.C. Some person, who could not be identified specifically by the defacto complainant then, allegedly attempted to cause injury to the defacto complainant by firing gun shots at him on the wee hours of the morning from a distance. One shot missed the defacto complainant. The second deflected and hit him. He suffered injury. He did not identify the assailant. In the F.I.R. no allegation is made specifically against any individual. No suspicion is also aired. In the course of investigation, the police realised that the petitioner is one who had used the gun against the defacto complainant. The gun used was allegedly handed over by the petitioner to a friend of his on the next day stating that it is dangerous to keep the same at his house. That person, on coming to know of the incident later, went before the police and made a clear breast of what had happened. It is in these circumstances that the police had arrayed the petitioner as an accused. It is now realised that the

petitioner has animosity against the defacto complainant consequent to monetary disputes. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner is not the one who fired at the defacto complainant. He had not handed over the gun in question to the person, who is alleged to be a friend of the petitioner and who had allegedly produced the gun before the police. The petitioner may, in these circumstance, be granted anticipatory bail, prays the counsel.

3. The learned Prosecutor opposes the application. He submits that the nature and gravity of the injury may not be considered as be all and end all in a prosecution for attempt to commit an offence like the one in this case under Section 308 I.P.C. The defacto complainant had no intention to falsely implicate the petitioner as can be seen from the tenor of the F.I. statement lodged by him. That the defacto complainant had suffered a gun shot injury is seen from the F.I. statement as also from the medical evidence available. In these circumstances it would be idle now to assume that the petitioner is being falsely implicated in the crime. The petitioner has to be arrested and interrogated. He may not be permitted to

arm himself with an order or anticipatory bail at this stage, submits the learned Prosecutor.

4. In the nature of the disputes and contentions raised, the learned Prosecutor was requested to place the case diary before me after flagging the relevant pages. I have gone through the case diary. At this early stage of investigation, I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I am satisfied that this is not a case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can and ought to be invoked in favour of the petitioner. I am unable to find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in

charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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